SUPREME COURT, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1980

No. 79-1364

CHARLES REYNOLDS GODE,
RAY IRWIN ANDERSON, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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The petitioners herein, CHARLES GODE and RAY ANDERSON, pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in the above-entitled case on February 4, 1980.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, whose judgment is herein sought to be reviewed, is unreported, and is printed in Appendix A.

JURISDICTION

The judgment of the United States Court of Appeals for the Ninth Circuit, affirming the convictions of petitioners for violation of 21 U.S.C. §841(a) was entered on February 4, 1980. The jurisdiction of the Supreme Court is invoked under 28 U.S.C. §1254 to review that decision.

QUESTIONS PRESENTED

1. The Court of Appeals for the Ninth Circuit improperly interpreted the legal effect of the decision of this court in Kotteakos v. United States, 328 U.S. 750 (1946) in affirming the trial court's denial of

petitioners' motions to sever.

2. The Court of Appeals for the Ninth Circuit failed to follow guidelines of this court and of its own prior decision in condoning the trial court's failure to identify and compartmentalize the evidence in order to reduce the inherent prejudice of a mass trial after denial of petitioners' motions to sever.

STATUTES INVOLVED

No specific statutory challenges are presented. Rules 8(b) and 14 of the Federal Rules of Criminal Procedure are involved tangentially as underlying the decisional law and the principles set forth therein.

> RULE 8(b). Joinder of Defendants. Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts

together or separately and all of the defendants need not be charged in each count.

RULE 14. Relief from Prejudicial Joinder
If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

STATEMENT OF THE CASE

The following designations will be used: Clerk's Transcript by CT; Reporter's Transcript by RT.

On July 21, 1978, an indictment was filed in the United States District Court, Southern District of California, charging each petitioner with violation of 21 U.S.C

§§ 841(a), 846, 952, 960 and 963. The charges are conspiracy to import amphetamines and conspiracy to possess amphetamines with intent to distribute. These charges were joined with a substantive count of possession of amphetamines and a conspiracy to possess cocaine with intent to distribute, which involved only co-defendants of petitioners. (CT p. 1-7)

The charges stemmed from the relationship of each petitioner to Elbert Watson, who was also charged in the indictment. GODE'S initial connection with Watson was concerning financing construction of greenhouses which GODE had designed.(RT Vol.VI, pp 1249,1250,1262,1263) ANDERSON lived in Northern California and derived income from construction of redwood tables. (RT Vol. III pp 1455,1457) He met Watson through a friend and expressed an interest in GODE'S project.

(RT Vol. III, pp 1458,1459)

Watson did, in fact, advance sums to GODE which were used to begin set-up of the greenhouse business. (RT Vol.VI, pp 1268, 1269,1273) GODE'S friend, Munroe, was to have assisted in this business, but, after being introduced to Watson, who needed a pilot, Munroe devoted more of his time to Watson's activities. (RT Vol. II, pp 471,474, 455,485,488)

ANDERSON also invested in the greenhouse business. (RT Vol. VII, p 1460) There were various meetings between ANDERSON, GODE and Watson, which were generally connected with the greenhouse investment. Drug involvement at such gatherings by GODE and ANDERSON was limited to observation of Watson's drug distribution organization with some minor participation, usually in the company of Munroe who was more deeply concerned with the

distribution scheme. (RT Vol.II, pp 471-488,493-507,531-556,592-604,614, Vol.VII, pp 1458-1460)

Watson's money came primarily from the sale of quantities of amphetamines which he had previously imported from Mexico. Sales occurred in California and other western states. (RT Vol.II, pp 482-489, 510-514) Watson was also setting up a cocaine distribution network in the same areas. The evidence in the trial court repeatedly connected GODE and ANDERSON with Watson's cocaine activities as well as his amphetamine activities. GODE and ANDERSON were linked to a cocaine run with Monroe to Santa Barbara, joint cocaine usage by Watson's associates was stressed, and ANDERSON gave Watson cocaine in return for amphetamines. However, neither ANDERSON nor GODE was charged with the cocaine conspiracy. (RT Vol.II, pp 507,534,538,543,548, Vol. III, p 604) Although it is conceded that drug usage was prevalent among all the defendants, this usage did not necessarily translate to conspiracy to distribute or sell amphetamines

or cocaine. In the summer of 1977, both GODE and ANDERSON severed relations with Watson. (RT Vol. III pp 601,612,622)

In May of 1978, Munroe, working with the DEA, set up an amphetamine buy with Watson that led to Watson's arrest, and the eventual indictment of GODE and ANDERSON. (RT Vol. II, pp 622-629) The indictment charged three separate conspiracies, conspiracy to import amphetamines, to possess amphetamines for sale, and to possess cocaine for sale. The overt acts supporting each conspiracy were also separate and distinct.

In August of 1978, both petitioners moved for severance based on Rule 14 grounds. (CT pp62-66, 103-107) On January 4, 1979, GODE renewed his motion for severance to avoid prejudicial and improper joinder. (CT pp 445-447) The motion was joined in by ANDERSON. On January 5, 1979, prior to trial, the motion to sever was denied. (CT p 491)

Thr jury trial concluded on January 19, 1979, with a finding of guilty of conspiracy to possess a controlled substance.

with intent to distribute, as to both GODE and ANDERSON. (CT pp 491,492,498,534) Appeal from the conviction was taken as to both GODE and ANDERSON on the issues of joinder, severance and failure of the court to reduce the prejudicial effect of the joint trial. (CT pp 503,536)

The appeals were consolidated on motion of the government and are presented as consolidated for purposes of this Petition. On February 4, 1980, the United States Court of Appeals for the Ninth Circuit affirmed the District court. This petition is taken in exception to that decision, and as the issues for petitioners are identical, a single petition is filed on behalf of both.

REASONS FOR GRANTING WRIT

USCS Rules of Court, Supreme Court Rule 19 1(b) sets forth some of the possible

reasons for granting a petition for Writ of Certiorari. It is submitted that the Court of Appeals for the Ninth Circuit has failed to follow the principles set forth by this Court in the decision of Kotteakos v. United States, 328 U.S. 750 (1946), and further has sanctioned departure from the accepted course of judicial proceedings by the District Court in failing to find that the District Court did not properly compartmentalize evidence as required by Blumenthal v. United States, 332 U.S. 535 (1947) and United States v. Kennedy, 564 F.2d 329 (9th Cir. 1977).

It is clear from a reading of the opinion rendered by the Ninth Circuit that the import of the Kotteakos decision has been missed and the argument by petitioners, with respect to the principles of that case, misread. In the opinion, this case is distinguished from Kotteakos because there were

multiple conspiracies in that case, and a single one here.

In fact, this case did present multiple conspiracies, and those conspiracies were charged. The evidence was presented in such a manner as to create the illusion of a single conspiracy. It is certainly true that some people, like Watson, were members of all the conspiracies. The same was true in Kotteakos. Others, as in Kotteakos, were involved, if at all, in the distinct conspiracies which were charged and had little or no knowledge of, or connection with, the other activities. It is absurd to conclude that use of cocaine or marijuana by Watson's associates, because the drugs were available, automatically included those associates in all his conspiracies. This case is similar to Kotteakos, although with fewer conspiracies. The government has reversed the situation by

pleading multiple conspiracies and mingling the proof and argument to present a picture of one overall conspiracy. The resulting prejudice is the same as was found in Kotteakos. The Court of Appeals for the Ninth Circuit should have followed Kotteakos and found error in refusal to grant the motions to sever.

Assuming the joinder was proper, when severance under Rule 14 was denied, the trial court was bound to observe the dictates of Blumenthal, supra, and Kennedy, supra. Both of these decisions require limiting and compartmentalizing evidence in this kind of case to prevent prejudice which is a recognized danger attendant on a mass trial. The Court of Appeals for the Ninth Circuit failed to enforce the safeguards set forth in these opinions and has approved the practice of mingling the evidence of the separate con-

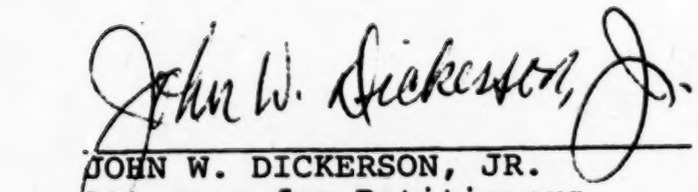
spiracies resulting in undue prejudice against the petitioners herein.

CONCLUSION

For the foregoing reasons, this Petition for Writ of Certiorari should be granted.

DATED: March 4, 1980

Respectfully submitted,



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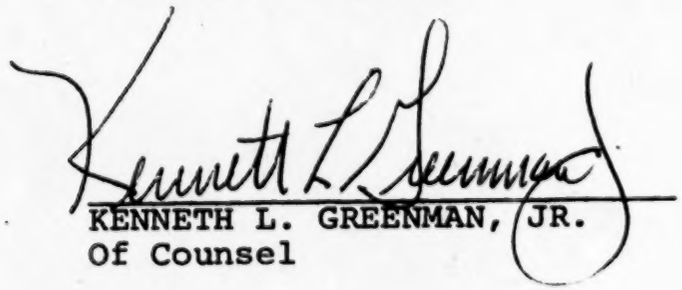

KENNETH L. GREENMAN, JR.
Of Counsel

APPENDIX A

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,	
	CA Nos.
Plaintiff-Appellee,	79-1139
	79-1275
v.	79-1372
SCOTT CORDON,	MEMORANDUM
CHARLES REYNOLDS GODE,	
RAY IRWIN ANDERSON,	DC No.
	Cr 78-438-GT
Defendants/Appellants	

Appeal from the United States District Court
for the Southern District of California

Before: CHOY and HUG, Circuit Judges, and
BILBY,* District Judge

Appellants Ray Irwin Anderson,

Charles Reynolds Gode, and Scot R. Gordon,

appeal their conviction in the United States

District Court for the Southern District of

California, Gordon Thompson, Jr., J., of

*The Honorable Richard M. Bilby, United States District Judge for the District of Arizona, sitting by designation.

conspiracy to possess amphetamines in violation of 21 U.S.C. §§4481(a)(1)[sic] and 846. The prosecution of appellants grew out of their relationship with Elbert Silas (Buster) Watson, whom the evidence showed to be the central figure in a very large drug importation and distribution operation. Appellant Gode recruited a pilot, Kenneth Munroe, to help in flying drugs to Watson's far-flung operation. Based on this experience, Munroe was able to tie together the various elements of Watson's operation. Appellant Gode was involved in the Los Angeles area, while Anderson worked in Northern California, and appellant Gordon was in Utah.

Appellants, together with Watson and others not involved in this appeal, were charged in Counts I and III of a four count superseding indictment returned in July of 1978. Count I charged all appellants with

conspiracy to possess amphetamines, and Count III charged conspiracy to import amphetamines. A jury found appellants guilty as charged in Count I but not guilty as to Count III.

Appellants raise numerous issues in this appeal. After a review of the record, we find no merit in any of them, and affirm the District Court.

Among the many issues, two deserve additional comment. Appellants claim the District Court erred in joining appellants with other defendants for trial, and subsequently failing to grant a severance. Appellants argue that, under the holding of Kotteakos v United States, 328 U.S. 750 (1946), they should not have been joined with other defendants for trial. In this case, as distinguished from Kotteakos, there was one continuous conspiracy that continued throughout the relevant time period. Further, all of the counts in the indictment

are clearly factually related. Under these circumstances, the joinder of these defendants and the denial of their motion to sever was proper. United States v Satterfield, 548 F.2d 1341 (9th Cir. 1977).

Appellant Gordon contends that without the Watson ledgers, there is insufficient evidence to sustain his conviction. This contention may be correct but we need not reach it as we feel the ultimate issue of authenticity of the records was properly submitted to the jury for determination.

The evidence supporting the authenticity of the ledgers was both direct and circumstantial. The witness Dunlap testified that she lived with Watson from October 8, 1976, until June 28, 1977. During that time she observed a locked bedroom to which she did not have general access. She did on several occasions enter while Watson was using it, at which

times she observed sacks of amphetamines.[1] When she inquired of Watson about the bedroom being locked, he asked her if she wanted to be responsible for whatever was in the room.

At the trial she identified her handwriting in Exhibit 32 (small green notebook) placed there during the time she was living with Watson. She also stated that the other writing in the book appeared to be Watson's. She, likewise, identified the handwriting in Exhibits 28 and 29 as appearing to be Watson's.[2]

Upon cross-examination, her identification of Watson's handwriting was weakened by her admission that it had been two years (at the time of trial) since she had seen his handwriting and that the main basis for her identification was the neatness of the

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[1] Subsequently identified as the room in which the Watson ledgers were found by the DEA agents during a search of the house.

[2] Exhibit 29 was a series of cards stapled together with the top card having the initials "SCT" on it.

writing.[3]

While the authentication could have been much stronger, nevertheless, the trial court found a prima facie showing of authenticity. See Fed.R.Evid. 901(b)(2). Having done so, the ultimate decision of authenticity was for the jury. United States v Weiner, 578 F.2d 757, 772-73 (9th Cir.), cert. denied, 439 U.S. 989 (1978); See Fed.R.Evid. 104(a)-(b), 901(a).

The determination as to the adequacy of the prima facie showing was one for the sound discretion of the trial court. United States v Sutton, 426 F.2d 1202 (D.C.Cir. 1969). Under all the evidence, both direct and circumstantial, we find no abuse of that discretion.

AFFIRMED.

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[3] However, the trial court made a specific finding that the witness was "very intimidated and very frightened" and appeared to be "very reluctant, frankly, to do any testifying against Watson and anyone else.

AFFIDAVIT OF SERVICE BY MAIL

STATE OF CALIFORNIA)
)ss.
COUNTY OF SAN DIEGO)

MARTHA SCHWARTZMANN, being first duly sworn, says:

That she is a citizen of the United States, over 18 years of age, a resident of and employed in the County of San Diego, State of California, and not a party to the within action.

That her business address is 1241 State Street, San Diego, California, 92101

That she served the attached Petition for Writ of Certiorari by placing two (2) true copies in an envelope addressed to the following:

Robert Bork
Solicitor General
Department of Justice
10th and Constitution Avenue
Washington, D.C. 20530

Said envelope was thereafter deposited in the United States mail on March 5, 1980 at San Diego, CAlifornia.

MARTHA SCHWARTZMANN

SUSCRIBED AND SWORN to before me this fifth day of March, 1980

Linda D. Vassier
Notary Public in and for
Said County and State